

## APPENDIX

### **Chronology of Decisions Relating to Disallowance of Counsel Fees**

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| 1924 | Board of Tax Appeals | <i>Sara Backer</i> , 1 B. T. A. 214: first expression of public policy doctrine; deduction in case of <i>successful</i> criminal defense disallowed. |
| 1925 | Board of Tax Appeals | <i>Norvin R. Lindheim</i> , 2 B. T. A. 229: to same effect, citing <i>Sara Backer</i> .  |
| 1929 | Board of Tax Appeals | <i>Burroughs Bldg. Material Co.</i> , 18 B. T. A. 101: public policy doctrine upheld; Sternhagen dissenting.   |
| 1930 | Board of Tax Appeals | <i>B. E. Levinstein</i> , 19 B. T. A. 99: deduction disallowed, citing <i>Burroughs</i> .  |
| 1930 | Board of Tax Appeals | <i>Sanitary Earthenware Specialty Co.</i> , 19 B. T. A. 641: deduction disallowed on grounds of stare decisis.                                       |
| 1930 | Board of Tax Appeals | <i>John W. Thompson's Estate</i> , 21 B. T. A. 568, <i>appeal dismissed</i> , 62 F. 2d 1082: deduction disallowed on grounds of stare decisis.       |
| 1931 | Second Circuit       | <i>Burroughs Bldg. Material Co. v. Commissioner</i> , 47 F. 2d 178: Tax Court affirmed.  |
| 1937 | Second Circuit       | <i>National Outdoor Advertising Bureau v. Helvering</i> , 89 F. 2d 878: deduction disallowed.  |

- 1943 Board of Tax Appeals *S. B. Heininger*, 47 B. T. A. 95: deduction disallowed on grounds of stare decisis.
- 1943 Seventh Circuit *Heininger v. Commissioner*, 133 F. 2d 567: B. T. A. reversed; deduction for counsel fees in unsuccessful defense in administrative proceeding allowed—public policy doctrine rejected.
- 1943 Eighth Circuit *Helvering v. Superior Wines & Liquors, Inc.*, 134 F. 2d 373: deduction for attorney's fees in case of settlement under penal statute disallowed.
- 1943 Supreme Court *Commissioner v. Heininger*, 320 U. S. 467: alleged conflict among circuits settled in favor of Seventh Circuit; deduction in case of administrative proceeding allowed and public policy doctrine rejected.
- 1944 Tax Court *Longhorn Portland Cement Company*, 3 T. C. 310: deduction for counsel fees in case of state anti-trust action which was compromised *held*, allowed, citing *Heininger*.
- 1944 Commissioner 1944 CUM. BULL. p. 43: acquiescence in *Texas Longhorn* (as to legal fees; non-acquiescence as to fines.)
- 1944 Commissioner G. C. M. 24377: counsel fees in unsuccessful antitrust defense ruled to be deductible.

1944 to 1956

Deductibility of counsel fees in unsuccessful criminal defense and inapplicability of public policy doctrine remain settled law for 12 years.

1954 Congress

1954 recodification: leaves language of I. R. C. §23a unchanged in §162 of the 1954 Code, thus indicating approval of G. C. M. 24377 and of rule that counsel fees in unsuccessful criminal defense may be deducted.

1956 Tax Court<sup>1</sup>

*Thomas A. Joseph*, 26 T. C. 562: public policy doctrine as applied to counsel fees revived; deduction disallowed; for first time it is suggested that *Heininger* rule applies only to administrative determinations.

1962 Commissioner

Revenue Ruling 62-175 (1962-2 CUM. BULL. 50); reverses G. C. M. 24377.

1964 Second Circuit

*Tellier v. Commissioner*: counsel fees in unsuccessful criminal defense held deductible, overruling *Burroughs*.

<sup>1</sup> *Anthony Cornero Stralla*, 9 T. C. 801 (1947), which dealt with the deductibility of lawful expenses of an unlawful business is omitted as irrelevant in this chronology. See *supra* p. 11, fn. 3. The various circuit court decisions discussed at *supra* pp. 12-16 are similarly omitted as they dealt with particular questions of fact not at issue here and do not relate to the subject of this chronology, which is the history of the specific rule that counsel fees are non-deductible as a matter of public policy in every case in which a criminal defense proves unsuccessful.